Supreme Court of the United States

OCTOBER TERM, 1962

No. 1060

ZEBEDEE HARDY, PETITIONER

vs.

UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[File Endorsement Omitted]

No. 822-61

Misc. No. 1834

ZEBEDEE HARDY

v.

THE UNITED STATE OF AMERICA, RESPONDENT

PETITION FOR LEAVE TO PROSECUTE APPEAL WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF—filed March 16, 1962

The petitioner, Zebedee Hardy being first duly sworn, on oath deposes and says that he desires to appeal from the order (or judgment) entered in the District Court on February 19, 1962 in Crim. No. 822-61, United State of America v. Zebedee Hardy, and is unable to pay the costs of the appeal, or to give security therefor; and that he believes that he is entitled to redress.

Your petitioner further states that subsequent to the entry of the order (or judgment) an application to prosecute an appeal from the order (or judgment) without prepayment of costs, accompanied by an affidavit in conformity with Section 1915 of Title 28, U.S. Code, was on February 19, 1962, made to the trial court, thereby enabling the trial judge to certify whether or not the appeal was taken in good faith, and that the trial court on February 19, 1962, denied petitioner's application.

The nature of the appeal is as follows:

1. Judge Holtzoff refuse to here testimony of certain defence witness.
2. Judge Holtzoff made accusation doing testimony of Officer Hutchinson, asserting they are justified in making mistake.

3. Police testified they received a tip, no one testified to confirm their statment.
4. The conflicting testimony of police officer should not have been excepted.
5. In adequate counsel.
6. He did not challenge the indictment sufficient.

[fol. 2] 7. The indictment was not a true bill.

8. Petitioner pray that this court will appoint him counsel.

WHEREFORE, petitioner requests that he be allowed to appeal from the order (or judgment) without being required to prepay fees or costs, or to give security therefor.

/s/ Zebedee Hardy
Petitioner

STATE of .....)
) ss.
COUNTY of .....)

I, /s/ Zebedee Hardy, being first duly sworn according to law, on oath depose and say that the matters and things stated in the foregoing petition and affidavit by me subscribed as facts are true, and that those matters and things stated therein as upon information and belief I believe to be true, and that I have this ..... day of ....., 1962, mailed a copy of the foregoing petition and affidavit, postage prepaid, to United State, attorney for District of Columbia, at his address United State District Court, Arthur J. Mclaughlin.

/s/ Zebedee Hardy
Petitioner

SUBSCRIBED AND SWORN TO before me by .....
..... this 15 day of March, 1962.

/s/ Edw. J. Keightley, Jr.
Notary Public

My Commission Expires November 23, 1965

[fol. 3]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. Misc. 1834

[File Endorsement Omitted]

[Title Omitted]

Before: Wilbur K. Miller, Chief Judge, in Chambers.

ORDER APPOINTING COUNSEL—Dated: March 19, 1962

Upon consideration of the petition for leave to prosecute an appeal without prepayment of costs, it is

ORDERED that Mozart G. Ratner, Esq., a member of the bar of this court be, and he is hereby, appointed to represent petitioner and allowed thirty days to file a memorandum in support of the petition.

[fol. 4]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. Misc. 1834

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR AN ORDER DIRECTING THE FURNISHING OF A STENOGRAPHIC TRANSCRIPT AT THE EXPENSE OF THE UNITED STATES, AND FOR AN EXTENSION OF TIME—filed April 17, 1962

Petitioner, Zebedee Hardy, by his court-appointed attorney, respectfully moves this Court for an order directing the furnishing to him of a stenographic transcript of the District Court proceedings in this case, Crim. No. 822-61, held on January 11, 12, 15 and 16, 1962, at the expense of the United States, and for an order extending until 30 days after the receipt of said transcript the time within which a memorandum may be filed in support of his petition to prosecute an appeal without prepayment of costs; and in support thereof petitioner shows as follows:

On January 15, 1962, petitioner was convicted of narcotics violations under 26 U.S.C.A. Sec. 4704(a) and 21 U.S.C.A. Sec. 174. A petition for leave to appeal in forma pauperis was filed in the District Court, and was on [fol. 5] February 19, 1962, denied, the trial judge stating "that the appeal is frivolous and not taken in good faith." The petition herein was filed in this Court on March 15, 1962, and the undersigned was appointed by the court to represent petitioner on March 19, 1962.

Petitioner appears to present at least two issues for appeal: (1) that the evidence was insufficient to sustain a conviction, and (2) that evidence was improperly received, being the product of an illegal arrest. Each of

these claims manifestly states an "issue that is not plainly frivolous" *Ellis* v. *United States*, 356 U.S. 674, 675. Assuming that the mere statement of a non-frivolous claim is itself insufficient to require the granting of leave to appeal (*Whitt* v. *United States*, 104 U.S. App. D.C. 1, 259 F.2d 158) grant or denial would appear to turn on whether the record provides any basis for the assertion of such a claim.

In such cases it is the function of assigned counsel to act "in the role of an advocate" who must "diligently" and "conscientious[ly]" investigate the record in order to determine whether it provides any support for "the possible grounds of appeal". *Ellis, supra.* Here careful search of the transcript of the motion to suppress evidence made before trial, interview of the petitioner, and of both prosecuting and defense trial counsel have failed to reveal any information to support petitioner's claims or any other possible grounds for appeal.

[fol. 6] For this reason, and because the claims of error asserted here cannot be disposed of with finality without consideration of the trial proceedings as a whole, the undersigned is compelled to seek a transcript of the trial in order to determine whether there is any basis for the petition for leave to appeal. In these circumstances it would seem clearly less adequate and more wasteful of the "valuable" "working time" of the reporters and counsel (*Whitt, supra*, 104 U.S. App. D. C. at 4, 259 F.2d at 161) to resort to "the reporter's reading of * * * the transcript" (*Edwards* v. *United States*, 103 U.S. App. D. C. 171, 173, 257 F.2d 885, 887) in full than to order a stenographic copy prepared. Without a transcript, counsel is unable at this time conscientiously either to file a memorandum in support of the petition or to represent to this Court that appeal is frivolous.

It is therefore respectfully requested that the Court grant this motion for the furnishing of a transcript at the expense of the United States, and for an extension of time, as prayed for herein.

Respectfully submitted,

/s/ Mozart G. Ratner
(appointed by this Court)

/s/ Joseph L. Sax
1411 K Street, N.W.
Washington 5, D. C.
Counsel for Petitioner

April 17, 1962

[fol. 7]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 8]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. Misc. 1834

[File Endorsement Omitted]

[Title Omitted]

OPPOSITION TO MOTION FOR AN ORDER DIRECTING THE FURNISHING OF A TRANSCRIPT AT THE EXPENSE OF THE UNITED STATES.—filed April 24, 1962

Comes now respondent by its attorney, the United States Attorney, and opposes petitioner's motion for an order directing the furnishing of a transcript at the expense of the United States, on the ground that petitioner has failed to demonstrate the need for such a transcript.

Petitioner's present counsel states that his petition appears to present at least two issues for appeal: (1) the sufficiency of the evidence to support the conviction (2) whether evidence was improperly received because seized after an illegal arrest. No facts are alleged to support either of these claims. Counsel states that "careful search of the transcript of the motion to suppress evidence made before trial, interview of the petitioner, and of both prosecuting and defense trial counsel have failed to reveal any information to support petitioner's claims or any other possible grounds for appeal." Apparently counsel has not yet consulted either the trial judge or the court reporter. In the absence of any specific factual allegations and in [fol. 9] view of counsel's failure to explore these other possible avenues of substantiating petitioner's generalized claims, the motion for a transcript at the expense of the United States should be denied at this time. Compare this Court's order in *McIntosh* v. *United States*, Misc. No. 1751, March 15, 1962. See also *Edwards* v. *United States*, 103 U.S. App.D. C. 171, 173, 256 F.2d 885, 887 (1958);

Whitt v. *United States*, 104 U.S.App. D.C. 1, 259 F.2d 158 (1958), *cert. denied*, 359 U.S. 937. The motion for an order extending until 30 days after receipt of the transcript the time within which a memorandum may be filed in support of the petition should also be denied.

Wherefore, it is submitted that the petition for an order directing the furnishing of a transcript at the expense of the United States be denied.

/s/ David C. Acheson
United States Attorney

/s/ Nathan J. Paulson
Assistant United States Attorney

/s/ Daniel A. Rezneck
Assistant United States Attorney

[fol. 10]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 11]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

[File Endorsement Omitted]

[Title Omitted]

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION—filed April 27, 1962

The Government apparently is of the view that a transcript need never be furnished unless petitioner's counsel has consulted the trial judge and the court reporters. Whatever merit there may be in this view in cases such as *McIntosh* (Opp., p. 2)—where the main issue could be adequately reconstructed by consulting the persons who were present and a small fragment of the transcript—it is palpably inapplicable where, as here (Motion, p. 2), the claim must be considered "in the light of all the * * * evidence." *Farrar* v. *United States*, 107 U.S. App. D. C. 204, 205, 275, F.2d 868, 869.

First, in such circumstances, the purpose of "conserving important judicial time" (*Edwards* v. *United States*, 103 U.S. App. D. C. 171, 173, 256 F. 2d 885, 887) and the "working time of appointed counsel, United States Attorneys, judges, witnesses and court reporters" (*Whitt* v. *United States*, 104 U.S. App. D. C. 1, 259 F. 2d 158, cert. denied 359 U.S. 937) would plainly be better served [fol. 12] by furnishing a stenographic transcript than by imposing upon counsel, the trial judge and the reporters the mammoth burden of attempting to reconstruct the entire record orally.

Second, it is utterly incompatible with the function of appellate advocacy to suggest that it can be performed adequately (*Ellis* v. *United States*, 356 U.S. 674, 675) upon *hearing* reporters read through the proceedings of an entire trial. "Frequently, issues cannot even be seen

—let alone assessed—without *reading* [and pondering] an accurate transcript." Boskey, "The Right to Counsel in Appellate Proceedings", 45 Minn. L. Rev., 783, 793 (1961). (emphasis added). Compare *Surrat* v. *United States*, 104 U.S. App. D. C. 380, 262 F.2d 691 (dissenting opinion) with *Surrat* v. *United States*, 106 U.S. App. D. C. 49, 269 F. 2d 240.

Wherefore, petitioner prays that the Court grant the motion for the furnishing of a transcript at the expense of the United States and for an extension of time as requested, or, should this motion be denied, for an extension [fol. 13] of time within which a memorandum in support of the petition may be filed until 30 days after the disposition of this motion.

Respectfully submitted,

/s/ Mozart G. Ratner
(appointed by this Court)

/s/ Joseph L. Sax
1411 K Street, N.W.
Washington 5, D. C.
Counsel for Petitioner

April 27, 1962

[fol. 14]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 15]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1961

Misc. No. 1884

District Court Criminal No. 822-61

[File Endorsement Omitted]

[Title Omitted]

Before: Wilbur K. Miller, Chief Judge, and Fahy and Bastian, Circuit Judges, in Chambers.

ORDER RE PREPARATION OF TRANSCRIPT ETC.—Dated: May 11, 1962

Upon consideration of petitioner's motion for an order directing that the stenographic transcript of proceedings be prepared at the expense of the United States and to extend the time within which he may file his memorandum in support of the petition for leave to prosecute an appeal without prepayment of costs, of respondent's opposition and of petitioner's reply, it is

ORDERED by the court that petitioner be, and he is hereby, allowed to proceed in forma pauperis to the extent of having the stenographic transcript of the testimony and evidence presented by the government prepared at the expense of the United States and that the time for filing a memorandum in support of the petition for leave to prosecute an appeal without prepayment of costs be, and it is hereby, extended until 30 days after preparation of the stenographic transcript. *Coppedge* v. *United States*, No. 157, October Term, 1961, Supreme Court of the United States, April 30, 1962.

Per Curiam.

[fol. 16]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR CLARIFICATION OR REHEARING—filed May 21, 1962

Upon consideration of petitioner's motion for an order directing that a stenographic transcript of the proceedings before the District Court be prepared at the expense of the government, this Court on May 11, 1962, entered an order that "the stenographic transcript of the testimony and evidence presented by the government" be prepared at government expense. The phrase "presented by the government" appears to limit the authorization to the preparation of only a portion of proceedings at the trial. Because it is believed that petitioner is entitled to a complete stenographic transcript, petitioner respectfully moves for clarification or, alternatively, for rehearing and modification of the order of May 11, 1962, to authorize the preparation, at government expense, of a stenographic transcript of the entire proceedings at the trial (*E.g.*, transcript prepared in *United States* v. *Blakeney, et al.*, D. Court Crim. No. 108-60, Court of Appeals No. 15,878, *sub. nom. Hair* v. *United States*).

[fol. 17] In *Coppedge v. United States*, No. 157, S. Ct., October Term 1961, April 30, 1962, 30 U.S. Law Week 4303, cited in this Court's order, the Supreme Court said that a defendant who petitions for leave to proceed *in forma pauperis* is entitled to appellate review no "less searching than that accorded paid apeals." 30 U.S. Law Week at 4306, 4305, 4308. Effectuation of that right requires that appointed counsel be "enable[d] * * * to attempt to make a showing * * * [whether there is] any

issue for the court's consideration not clearly frivolous." Id. at 4305. Investigation of all "the possible grounds of appeal" (*Ellis* v. *United States*, 356 U.S. 674, 675; Motion, April 17, 1962, pp. 2-3) demands nothing less than a transcript containing all the testimony and evidence, all the colloquy, comment, argument and instructions. Since a non-indigent litigant can obtain such a complete transcript to search for error, it cannot be withheld from an indigent litigant.

Plainly, this Court may not limit its consideration to the issue or issues presented below. The Supreme Court expressly held in *Coppedge* that after the Court of Appeals has appointed counsel and furnished a record it must determine whether "the applicant *then* presents *any issue* for the court's consideration not clearly firvolous." (emphasis supplied). 30 U.S. Law Week 4305 and n. 10, 4304, n. 7. Indeed this Court itself has recognized that an appeal may be based upon issues not raised in the petition. Compare *Surratt* v. *United States*, 104 U.S. App. D. C. 380, 262 F. 2d 691, 692 (dissenting opinion) with *Surratt* v. *United States*, 106 U.S. App. D.C. 49, 269 F. 2d 240, reversing the judgment of conviction. And the scope of review in this Court cannot be reduced be-
[fol. 18] cause petitioner had the assistance of counsel below. "[T]he actual record * * * might disclose issues substantial enough to constitute probable or possible 'plain error', even though trial counsel was not aware of their existence; and the indigent should have the same opportunity as the wealthy to urge that plain error should be noticed on appeal." Boskey, *"The Right to Counsel in Appellate Proceedings*, 45 Minn. L.Rev. 783, 793 (1961).

Wherefore, petitioner prays that this Court clarify or modify its order of May 11, 1962, to provide that he be furnished with a stenographic transcript of the entire proceedings at trial before the District Court at the expense of the government and that the time for filing a memorandum in support of the petition for leave to prosecute appeal without prepayment of costs be extended

until 30 days after preparation of the stenographic transcript.

Respectfully submitted,

/s/ Mozart G. Ratner
(Appointed by this Court)

/s/ Joseph L. Sax
1411 K Street, N. W.
Washington 5, D. C.

May 21, 1962

[fol. 19]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 20]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

[File Endorsement Omitted]

[Title Omitted]

Before: Wilbur K. Miller, Chief Judge, and Fahy and Bastian, Circuit Judges, in Chambers.

ORDER DENYING MOTION FOR CLARIFICATION OR REHEARING—Dated: July 23, 1962

On consideration of petitioner's motion for clarification or rehearing, it is

ORDERED by the court that the motion be, and it is hereby, denied.

And on consideration of petitioner's request to enlarge the time to file his memorandum in support of the petition for leave to prosecute appeal without prepayment of costs, it is

ORDERED that petitioner be allowed to file the memorandum within 30 days from this date.

Per Curiam.

[fol. 21]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

[Title Omitted]

MOTION TO EXTEND TIME—filed August 16, 1962

Petitioner respectfully moves for an extension of time in which to file memorandum in support of the petition for leave to prosecute appeal without prepayment of costs from August 22, 1962 until September 22, 1962.

The grounds for this motion are as follows: Counsel, whose daughter has been taken seriously ill, is absent from the District of Columbia and will be unable to prepare said memorandum by August 22, 1962.

Wherefore, it is respectfully requested that an extension of time be granted until September 22, 1962.

Respectfully submitted,

MOZART G. RATNER

By /s/ David I. Shapiro
Counsel for Petitioner

August 16, 1962

[fol. 22]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 23]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

[File Endorsement Omitted]

[Title Omitted]

Before: Wright, Acting Chief Judge, in Chambers.

ORDER EXTENDING TIME—Dated: August 27, 1962

Petitioner's unopposed motion for extension of time to file memorandum in support of petition for leave to prosecute appeal without prepayment of costs to September 22, 1962, is hereby granted.

[fol. 24]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

[File Endorsement Omitted]

[Title Omitted]

MOTION FOR AN ORDER DIRECTING FURNISHING OF STENOGRAPHIC TRANSCRIPT OF BALANCE OF DISTRICT COURT PROCEEDINGS OR, IN THE ALTERNATIVE, FOR ENTRY OF AN ORDER DENYING LEAVE TO APPEAL—filed September 10, 1962

On May 11, 1962, in response to petitioner's motion for a transcript of the entire proceeding, this Court directed preparation of a stenographic transcript "of the testimony and evidence presented by the government." On July 23, 1962, this Court confirmed the limitation by denial of petitioner's motion for clarification or rehearing. The undersigned has carefully examined the transcript furnished pursuant to the order of May 11, 1962. He is unable to perceive therein any non-frivolous ground for appeal.

Counsel is unable to advise the Court, however, that he has completed a "conscientious investigation" of all "the possible grounds for appeal" (*Ellis* v. *United States*, 356 U.S. 674, 675), because in his opinion, such investigation requires study of the portions of the transcript containing the testimony and evidence presented by the defendant, as well as the Judge's charge and that has not [fol. 25] been possible.[1] Accordingly, in our opinion, petitioner has not yet had that "adequate representation by counsel" which *Ellis* contemplates must be afforded before any determination can properly be made whether he is entitled to appeal *in forma pauperis*.

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[1] Consult Boskey, *The Right to Counsel in Appellate Proceedings*, 45 Minn. L.Rev. 783, 793-796 (1961).

We are not unaware of the statement in *Johnson* v. *United States*, 352 U.S. 565, 566, that it is not essential "in every * * * case" that "the United States must furnish the defendant with a stenographic transcript of the trial." Cf. *Whitt* v. *United States*, 104 U.S. App. D.C. 1, 3-4, 5, 259 F.2d 158, 160-161, 162. In *Coppedge* v. *United States*, 369 U.S. 438, 446-447, the Supreme Court held that what must be furnished is a record of "sufficient completeness" to enable petitioner or his counsel "to attempt to make a showing that the District Court's certificate of lack of good 'faith' is in error * * *." In our view, where such a showing depends upon unearthing "plain error" (Rule 52(b)), a complete transcript is essential.

To deny indigent's counsel opportunity to comb any portion of the proceedings for such error, when opportunity to comb that portion is available to retained counsel, would appear to be the very "invidious discrimination" *Griffin* v. *Illinois*, 351 U.S. 12, and *Coppedge*, 369 U.S., at 445, note 13, forbid. Indigents have the same right as non-indigents to rely on "plain error," in whatever portion of the proceeding committed. "Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." [fol. 26] *Griffin* v. *Illinois*, 351 U.S., at 19. As Mr. Justice Frankfurter put it, 351 U.S., at 23, indigents cannot be precluded from securing the same review available to others "by disabling them from bringing to the notice of an appellate tribunal errors of the trial court which would upset the conviction were pretrial opportunity for review not foreclosed." To deny a transcript of any portion of the proceeding is *pro tanto* to deny opportunity for review of plain error in that portion.

Of course, to require the Government to furnish a complete transcript whenever indigent's counsel conceives it necessary to performance of his advocate's function (*Ellis* v. *United States*, 356 U.S., at 675), will put the government to expense without any assurance that a non-frivolous ground will be found. But that is unavoidable, for nothing short of study of the complete transcript will disclose whether unnoticed plain error was committed or not. In this respect furnishing a complete transcript

before deciding whether an indigent has a right to appeal is like having a trial before rendering judgment. "Lawsuits often prove to have been groundless; but no way has been discovered of relieving a defendant from the necessity of a trial to establish the fact." *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 51-52.

The choice lies between imposing on the government the cost of furnishing a complete stenographic transcript in all cases where counsel desires to search for plain error, and denying leave to appeal although plain error may exist. We think there is really no alternative: governmental economy cannot be weighed in the same ju-
[fol. 27] dicial scale with "equal treatment for every litigant before the bar." *Coppedge*, 369 U.S., at 447.

Since in the present posture of the case we cannot conscientiously request leave to withdraw (*Ellis* v. *United States*, 356 U.S., at 675), we respectfully move for a transcript of the portions of the proceeding not heretofore furnished and, if this request is denied, pray that this Court enter an order denying petitioner leave to appeal *in forma pauperis*. Cf. *United States* v. *Procter & Gamble Co.*, 356 U.S. 677, 680-681.

Respectfully submitted,

/s/ Mozart G. Ratner
(Appointed by this Court)
1411 K Street, N.W.
Washington 5, D. C.
Counsel for Petitioner

September 20, 1962

[fol. 28]

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 29]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1884

[File Endorsement Omitted]

[Title Omitted]

RESPONSE TO PETITIONER'S MOTION FOR AN ORDER DIRECTING FURNISHING OF ADDITIONAL TRANSCRIPT—filed September 26, 1962

Respondent by its attorney, the United States Attorney, respectfully advises the Court that it does not intend to submit an opposition to the instant motion.

/s/ David C. Acheson
United States Attorney

/s/ Frank Q. Nebeker
Assistant United States Attorney

CERTIFICATE OF SERVICE [omitted in printing]

[fol. 30]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

[File Endorsement Omitted]

[Title Omitted]

Before: Miller, Fahy and Bastian, Circuit Judges, in Chambers.

ORDER DENYING MOTION FOR STENOGRAPHIC TRANSCRIPT OF THE BALANCE OF THE DISTRICT COURT PROCEEDINGS—
Dated: October 24, 1962

On consideration of petitioner's motion for an order directing furnishing of stenographic transcript of balance of District Court proceedings or, in the alternative, for entry of an order denying leave to appeal, and of respondent's answer thereto, it is

ORDERED by the court that petitioner's motion for stenographic transcript of the balance of the proceedings in the District Court is hereby denied.

Per Curiam.

Circuit Judge Fahy would grant the motion.

[fol. 31]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Misc. No. 1834

District Court Criminal No. 822-61

[File Endorsement Omitted]

[Title Omitted]

Before: Bazelon, Chief Judge, in Chambers.

ORDER AUTHORIZING CLERK TO PREPARE A CERTIFIED RECORD ETC.—Dated: November 23, 1962

On consideration of petitioner's unopposed motion to authorize the Clerk to prepare a certified record for use on petition for writ of certiorari, it is

ORDERED that the Clerk is hereby authorized to prepare a certified record in this case for use on petition for writ of certiorari in the Supreme Court of the United States, without prepayment of costs.

[fol. 32]

DESIGNATION OF RECORD [omitted in printing]

[fol. 33] • • •

[fol. 34]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 35]

SUPREME COURT OF THE UNITED STATES

No. 783 Misc., October Term, 1963

ZEBEDEE HARDY, PETITIONER

vs.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—April 29, 1963

On Consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1060 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as through filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1963 680528 1249